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10/806,189	03/23/2004	Dan Lafontaine	391-B04.US	2018

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EXAMINER
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SHARMA, RASHMI K

ART UNIT	PAPER NUMBER
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3651

MAIL DATE	DELIVERY MODE
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06/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/806,189

Applicant(s)

LAFONTAINE ET AL.

Examiner

Rashmi K. Sharma

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-25 is/are pending in the application.
- 4a) Of the above claim(s) 26-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7 and 16 is/are rejected.
- 7) ☐ Claim(s) 8-15 and 17-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/26/2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application.
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 and 6-25 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "...the raisable guides being *lowerable* to allow the product cases ...from each said first case guide to selectively merge onto a respective said second case guide". Then claim 1 further recites "each said raisable guide allowing flowing of mixed product cases located onto respective said second case guide thereunder when in a *raised* position." It is unclear as to exactly what position Applicant intends to place the raisable guides in order for the products to flow. Is it a lowered or raised position? Further clarification is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 6, 7, 16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (US Patent number 1,800,898) in view of De Greef (US Patent number 4,411,366).

Nelson discloses an order merging system comprising at least two depalletizing stations (2, 3), each depalletizing station, at least one pair of first case guides (outer guide rails of each of conveyors 5, 6 running towards the conveyor 8) in communication therewith and having at least one pair of curved, twisted and downwardly sloping lanes (see Figures 1, 6 and 7) for guiding at least one product case of the respective product unit for the depalletizing station therealong in each of the first case guides, for each pair of first case guides, at least one pair of raisable guides (guide rails of conveyor 11) connected downstream thereof and in respective communication therewith, at least one pair of independent mixing second case guides (14) of a mixing conveyor (13) for receiving mixed product cases thereon to feed the cases away from the at least two depalletizing stations (2, 3), and located downstream therefrom, each said second case

guide (14) being in communication with a respective one of said raisable guides (see Figures 6 and 7), the raisable guides being lowerable to allow the product cases of the respective product unit for the depalletizing station from each said first case guide to selectively merge onto a respective said second case guide (14), each said raisable guide allowing flowing of mixed product cases located onto respective said second case guide (14) thereunder when in a raised position. Nelson also discloses for each depalletizing station, at least one accumulating conveyor system (along 5, 6) connected thereto, each accumulating system being dedicated to the respective product unit for the depalletizing station connected thereto, each accumulating conveyor system (5, 6) having at least one pair of the first case guides (outer guide rails of each of conveyors 5, 6, running towards the conveyor 8), each of the first case guides receiving at least one case of the respective product unit for the depalletizing station connected thereto, wherein each said mixing second case guide is continuous with a respective said raisable guide, which is in turn continuous with a respective said first case guide, the accumulating conveyor system (5, 6) includes a conveyor end portion (see Figure 7 area where 11 meets 13) and a sloped gravity conveyor (11, read page 1, line 46 and page 4 lines 54-56), the first case guides running from the conveyor end portion to the mixing conveyor (8) via the sloped gravity conveyor (11), the conveyor end portion and the sloped gravity conveyor (11) each includes a pair of independent product accumulation lanes (see Figure 1, the area around the end of 11 and the beginning of 13 is in the area before each respective lane merges) and wherein each of the second

case guides (14) is includes a pair of independent mixing lanes (see Figure 1, 11 and area around the beginning of 13).

Nelson as disclosed above, fails to show each depalletizing station being dedicated to a different respective product unit depalletized thereon and 16 depalletizing stations.

De Greef does disclose each depalletizing station being dedicated to a different respective product unit depalletized thereon (read claim 1 lines 28-33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow Nelson's depalletizing stations to convey different products or articles per lane as taught by De Greef in order to provide for a conveyor system capable of more efficiently conveying different products or articles from one point to another. While Nelson fails to show 16 depalletizing stations, it does disclose 3. It would be well within the purview of one having ordinary skill in the art to provide for a multitude of depalletizing stations, depending on the user's needs.

### ***Allowable Subject Matter***

Claims 8-15 and 17-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Dependent claims 8, 17 and 21 recite the structural limitations of an order merging system comprising a conveyor end portion being hingeably connected to the

sloped gravity conveyor, thereby moving laterally relative to the sloped gravity conveyor, in which a case switch is connected to the mixing lanes and wherein the depalletizing station includes a main support frame having a mezzanine level with a lift access opening therein, the lift access opening being sized and shaped to receive therethrough a pallet having thereon the product case, in combination with the rest of the recited structure, clearly defines over the prior art.

### ***Response to Arguments***

Applicant's arguments filed 3/26/2007 have been fully considered but they are not persuasive.

Applicant argues the term "twisted". Twisted as defined in Merriam-Webster's Collegiate Dictionary 10<sup>th</sup> Edition is as follows: *a spiral turn or curve*. Therefore the first case guides are indeed "twisted".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., one independent mixing second case guide for each one of the first case guides of the corresponding depalletizing stations) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that Nelson's raisable guides do not allow the flow of mixed product cases located onto the mixing second case guide thereunder when in a

raised position, however the Examiner disagrees. As can be seen in Figure 7, when the raisable guides are lowered, the products are allowed to flow from the first case guides onto conveyor 11. When the raisable guides are raised, the products are allowed to flow from conveyor 11 onto the second case guides. Therefore the raisable guides do indeed allow the flow of mixed product cases located onto the mixing second case guide thereunder when in a raised position

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rashmi K. Sharma whose telephone number is 571-272-6918. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571-272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a



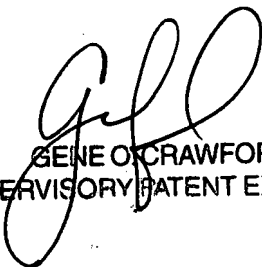
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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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GENE O'CRAWFORD  
SUPERVISORY PATENT EXAMINER